

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KAREN LAEMMLIN, §
Plaintiff, §
§
v. § CIVIL ACTION NO. 4:21-cv-00181
§
KROGER TEXAS, L.P. §
Defendant § JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Kroger Texas, L.P. ("Defendant") in the cause styled "*Karen Laemmlin v. Kroger Texas, L.P.*" originally pending as Cause No. 141-323054-21 in the 141st Judicial District Court of Tarrant County, Texas, files this Notice of Removal of the cause to the United States District Court for the Northern District of Texas, Fort Worth Division.

I.
BASIS FOR REMOVAL

The basis of the removal of this action is diversity jurisdiction under 28 U.S.C. § 1332. Diversity jurisdiction exists in this case because there is complete diversity of citizenship between the parties, Defendant is not a citizen of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

II.
DIVERSITY JURISDICTION

Plaintiff, at the time of the initial filing of this action and at the current time of the removal of this action, was and is a citizen, resident, and domicile of the State of Texas.

Kroger Texas L.P. at the time of the initial filing of this action and at the time of the removal of this action, was and is a limited partnership formed under the laws of Ohio. The general partner of Kroger Texas L.P. is KRGP Inc., an Ohio corporation with its principal place of business in Ohio. The only limited partner is KRLP Inc., an Ohio corporation with its principal place of business in Ohio. Neither KRGP Inc. nor KRLP Inc., the only two partners of Kroger Texas L.P., has ever been a resident of, incorporated in, or had its principal place of business in the State of Texas.

**III.
FACTUAL BACKGROUND**

Plaintiff claims that as she entered the Kroger store on or about February 22, 2019, she was hit by grocery carts being pushed by a Kroger employee. Plaintiff filed suit on January 22, 2021, in the 141st Judicial District Court of Tarrant County, Texas, asserting a negligence cause of action against Defendant.

**IV.
THE AMOUNT IN CONTROVERSY**

Plaintiff judicially admits in her Original Petition that she seeks damages of \$250,000 to \$1,000,000 for past and future medical expenses, physical pain and suffering and mental anguish, physical impairment, and disfigurement.¹ As a result, the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs, and this case is removable.²

¹ See Plaintiff's Original Petition attached hereto as Exhibit 2.

² See *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); see also *Laughlin v. Kmart Corp.*, 50 S.W.3d 871, 873 (10th Cir. 1995) (amount in controversy is ordinarily determined by allegations in complaint).

V.
REMOVAL IS TIMELY

This removal is timely because it is filed “within thirty days after receipt, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained the case is one which is or has just become removable.”³ Defendant first became aware this case was removable on or about February 3, 2021, when Defendant was served with Plaintiff's Original Petition. Accordingly, this removal is timely because it is made within thirty days after the receipt by Defendant of the document that first demonstrated the case was removable. Moreover, less than one year has passed since the commencement of the action in state court on January 22, 2021.⁴

VI.
VENUE

Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the county in which the removed action has been pending.

VII.
PROCEDURAL REQUIREMENTS

Defendant filed with the Clerk of the 141st Judicial District Court of Tarrant County, Texas a Notice of Filing Notice of Removal to Federal Court simultaneously with the filing of this Notice of Removal.

Pursuant to Local Rule 81.1, the following documents are attached hereto for the Court's reference:

(1) State court docket sheet (as of February 23, 2021);

³ 28 U.S.C. § 1446(b).

⁴ *See id.*

- (2) Plaintiff's Original Petition (filed January 22, 2021) with Service of Citation; and
- (3) Defendant Kroger Texas, L.P.'s Original Answer (filed February 23, 2021).

Also, in compliance with Local Rule 81.1, Defendant has filed the following documents with the Notice:

- Civil Cover Sheet
- Supplemental Civil Cover Sheet
- Certificate of Interested Persons

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this case be removed to the United States District Court for the Northern District of Texas, Fort Worth Division.

Respectfully submitted,

/s/ Jack Ormond

B. Kyle Briscoe

State Bar No. 24069421

kbriscoe@peavlerbriscoe.com

Jack Ormond

Attorney in charge

State Bar No. 24037217

jormond@peavlerbriscoe.com

PEAVLER | BRISCOE

2215 Westgate Plaza

Grapevine, Texas 76051

214-999-0550 (telephone)

214-999-0551 (fax)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that this document was served on counsel of record in accordance with the Federal Rules of Civil Procedure using the court's ECF system on February 23, 2021.

/s/ Jack Ormond

Jack Ormond